No. 87

In the Supreme Court of the United States

OCTOBER TERM, 1952

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD A. RUMELY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 87

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD A. RUMELY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

In this Reply Brief we shall deal with certain of respondent's contentions which we believe warrant further elaboration.

I

Resolution 298 is not void for indefiniteness

Respondent appears to urge that Resolution 298 which authorized the investigation in question is void for indefiniteness and therefore he cannot be held liable for refusing to produce the records demanded by the Select Committee and the queries put to him (Resp. Br. 24–26). The answer to this contention is two-fold: (1) there is no requirement of definiteness for resolutions empow-

ering legislative committees to investigate, and (2) respondent was sufficiently apprised of the pertinence of the demands made upon him.

1. *There is no requirement of definiteness for resolutions empowering legislative committees to investigate.* No provision of the Constitution—and nothing in its basic structure—limits the powers of inquiry which Congress may bestow on any committee, so long as it does not go beyond the sphere over which Congress itself has authority. There is no doctrine of separation of powers as between Congress and its committees. If it were feasible, Congress or one of its Houses could conduct an investigation itself, without delegating its authority to any committee. In the beginning, the Senate had only 26 members, less than some present committees,[1] and only slightly more than the 21 members on the present Senate Committee on Appropriations. 60 Stat. 815. Indeed, R. S. 102 still refers to matters "under inquiry before either House * * * or any committee of either House."

Such a Congressional inquiry could be conducted without any underlying statute or resolution defining its scope. The inquiry would necessarily be limited to facts relating to subjects which Congress had constitutional authority to investigate. It would be necessary to show that

[1] Most House committees have 25 or 27 members. The Committee on Appropriations consists of 43 members. 60 Stat. 822.

a particular question pertained to such a subject, but the absence of a resolution describing the subject to be investigated would not render the whole proceeding void.

The Committees sit as arms of Congress, not as subordinate agencies. And the necessities of their relationship to Congress require that the subjects over which they have jurisdiction be broadly defined. All regular standing committees—at least in the Senate (Legislative Reorganization Act, 1946, Sec. 134, 60 Stat. 831–832)—may make "investigations into any matter within its jurisdiction".[2] The Committees on Interstate and Foreign Commerce, for example, have jurisdiction over "interstate and foreign commerce generally", *inter alia* (60 Stat. 817, 826); the Committees on Agriculture over "agriculture generally", *inter alia* (*id.*, at 815, 823); the Committees on the Armed Services over "common defense generally", *inter alia* (*id.*, at 815, 824); and the Committees on Appropriations simply over "appropriation of the revenue for the support of the Government" (*ibid.*)—which might

[2] Investigations are authorized in the House by special resolution. But these resolutions frequently authorize the standing committees merely "to conduct thorough studies and investigations relating to matters coming within the jurisdiction of such committee". See, for example, House Resolution 141, 80th Cong., 1st sess., printed at 93 Cong. Rec. 5057, which uses the above language in authorizing the Committee on Armed Services to conduct an investigation; House Resolution 93, printed in 93 Cong. Rec. 5058.

permit inquiry into every subject for which Congress does or could be asked to appropriate money. These definitions of the powers of Congressional committees are far broader than the standards of definiteness required in criminal statutes. They are far broader than the standards applicable when the Congress is delegating authority to the Executive Departments or agencies. No administrative body could be empowered merely to regulate "interstate or foreign commerce generally." Cf. *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495. And yet no one has ever suggested that these committees are unconstitutional, or that they lack power to investigate, because of the sweep of their authority.

But respondent seems to argue that the rule as to definiteness of criminal statutes becomes applicable in a prosecution for refusing to testify before a committee, that R. S. 102 and the statute or resolution embodying the Committee's authority must be read together as an integrated criminal law, and that if the authorizing resolution so read does not satisfy criminal law standards of definiteness it must be deemed unconstitutional in so far as compelling testimony from witnesses is concerned. Acceptance of this argument would impose upon the Congressional power to create committees requirements as to specificity entirely inconsistent with practice and history, and without any constitutional basis. For the long exercised power to establish committees with general

investigating authority would be futile if such committees could not demand the prosecution of witnesses who would not testify.

No such limitation is essential to protect witnesses against essential unfairness or infringement of their right not to be questioned about matters outside the constitutional authority of Congress. We turn to the criminal statute, R. S. 102 (Govt. Main Br. 2), to see whether it gives a witness or prospective witness an "ascertainable standard of guilt" (*Winters* v. *New York*, 333 U. S. 507, 515), without regard to the generality of the statute or resolution by which the committee is created.

The first portion of R. S. 102 provides that "every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House * * * or any committee of either House of Congress, willfully makes default" shall be guilty of a misdemeanor. The ingredients of the crime are that the witness must be summoned to give testimony, that it be on a matter under inquiry, and that he "willfully makes default". There is nothing indefinite about any of these factors insofar as the witness is concerned. The statute does not leave it to the witness to determine the nature of the matter under inquiry; he need only know that the summons is to testify on a matter which is under inquiry. And this is a reasonable

means of exercising the power of Congress to investigate. The defaulting witness is not thereby deprived of his right to defend against prosecution on the ground that the whole proceeding is unconstitutional for some other reason, but that does not go to the definiteness of the statutory obligation.

Nor is the second clause of R. S. 102, which punishes refusal "to answer any question pertinent to the question under inquiry," made unconstitutionally indefinite by the generality of the statute or resolution creating the investigating committee. If we assume that the witness must have a basis for judging the pertinence of the "question under inquiry" in order to determine whether he must answer, it does not follow that such information is obtainable only from the resolution creating the committee. A witness might not, of course, be aided by reference to "the common defense generally" or to "interstate and foreign commerce generally." But the precise question under inquiry in an investigation or in a portion of it would normally be perfectly obvious at the time of the question, from the previous history of the inquiry. A witness who honestly had doubts could ask the committee before deciding whether to answer a particular query.

2. *Respondent was sufficiently apprised of the pertinence of the demands made upon him.* Even if we assume that resolutions, rules, or statutes

creating legislative committees must satisfy some standard of definiteness, Resolution 298 would be valid. If any such requirement exists, the standard of definiteness required must be a broad one, not the narrower rule applicable to criminal statutes. And the materials discussed in our main brief at pp. 28–45 demonstrate that the Resolution's key phrase—"all lobbying activities intended to influence, encourage, promote, or retard legislation"—has a sufficiently definite meaning to delimit the Select Committee's inquiry and to set bounds to its work. In our view, it is undeniable—on the basis of the Resolution's wording and immediate legislative history, the scope of previous Congressional inquiries into "lobbying," the Select Committee's own understanding of its mission, and the particular evidence presented to it in the first part of its hearings—that the Committee was authorized to probe into organized attempts of groups such as CCG to influence legislation through public opinion, and in that connection to consider the workings of the Regulation of Lobbying Act of 1946. If we are right in that view, there can clearly be no doubt that Resolution 298 was sufficiently definite for inquiry purposes. If we are wrong, respondent may prevail in his contention that the demands made upon him were not pertinent to the inquiry the House authorized by Resolution 298, but the Resolution itself cannot be characterized as invalid.

Respondent cannot properly complain that there was no way of discovering whether the particular demands made upon him were "pertinent" to the "question under inquiry." By the time he appeared before the Select Committee, the scope of the investigation was plain as a pikestaff to him and to the members of the Committee. He knew exactly what the Committee deemed to be the subject matter of its inquiry when it was investigating CCG and the other organizations into whose activities it probed in the second phase of its investigation (see Govt.'s Main Br. 36–45, 52–57). He did not refuse to comply on the ground that he did not know, and could not discover, what the Committee was driving at. On the contrary, his refusal was placed squarely on the ground that he knew precisely what the Committee was trying to discover, and he believed that they had no right to make that type of inquiry because the First Amendment forbade it. In short, it was his view that the demands *were* "pertinent" to the "question under inquiry" by the Committee, but that the Constitution prohibited the Committee from inquiring into that question at all. But respondent's mistake of law would be no more excuse than was Sinclair's comparable "mistaken view of the law." *Sinclair* v. *United States*, 279 U. S. 263, 299. And see Point II, *infra*.

II

"Willfully" as used in R. S. 102 means deliberately or intentionally

Respondent argues that bad faith or bad purpose is an essential ingredient of "willfulness" under R. S. 102, and that the trial court's charge (R. 177) was therefore erroneous (Resp. Br. 53–55).

Sinclair v. *United States*, 279 U. S. 263, 299, indicates the error in that view. Moreover, the word "willfully," as used in R. S. 102, has several times been expressly interpreted by the Court of Appeals for the District of Columbia Circuit as requiring deliberate or intentional conduct, but not necessarily an evil or bad purpose. *Fields* v. *United States*, 164 F. 2d 97, 99–100, certiorari denied, 332 U. S. 851; *Townsend* v. *United States*, 95 F. 2d 352, 357–358, certiorari denied, 303 U. S. 694;[3] *Eisler* v. *United States*,

[3] In the *Townsend* case the Court of Appeals stated (p. 358):

"* * * The meaning of the word depends in large measure upon the nature of the criminal act and the facts of the particular case. It is only in very few criminal cases that 'willful' means 'done with a bad purpose.' Generally, it means 'no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law.' *American Surety Co.* v. *Sullivan*, 2 Cir., 7 F. 2d 605, 606. In *United States* v. *Edwards*, C. C., 43 F. 67 (cited by appellant) the court said: 'Willfully means with design, with some degree of deliberation.' In *Grand Trunk Ry. Co.* v. *United States*, 7 Cir., 229 F. 149, 149, the court said: 'The word "willfully,"

170 F. 2d 273, 280, 284, certiorari dismissed, 338 U. S. 883; *Dennis* v. *United States*, 171 F. 2d 986, 990–1, certiorari denied on this point, 337 U. S. 954, affirmed on another point, 339 U. S. 162. We think that these decisions should be followed.

This Court has frequently pointed out that "willful" is a word "of many meanings, its construction often being influenced by its context." *Spies* v. *United States*, 317 U. S. 492, 497; *United States* v. *Murdock*, 290 U. S. 389, 394; *United States* v. *Illinois Central R. Co.*, 303 U. S. 239; *Screws* v. *United States*, 325 U. S. 91, 101. In the *Illinois Central* case, the Court observed (303 U. S. at 242–243):

> * * * In statutes denouncing offenses involving turpitude, "willfully" is generally used to mean with evil purpose, criminal intent or the like. But in those denouncing acts not in themselves wrong, the word is often used without any such implication. Our opinion in *United States* v. *Murdock*, 290 U. S. 389, 394, shows that it often denotes that which is "intentional, or knowing, or voluntary, as distinguished from accidental," and that it is employed to characterize "conduct marked by careless disregard whether or not one has the right so to act."

---

as used in the act, has a number of times engaged the attention of the courts and has quite uniformly been held not to require an evil intent, but only that the defendant should have purposely or intentionally failed to obey the statute, having knowledge of the facts." * * *"

Making default before a congressional committee is not an offense involving moral turpitude (*Sinclair* v. *United States*, 279 U. S. at 299). A consideration of the nature of the offense and its context demonstrate that "willfully," as used in R. S. 102, can mean no more than deliberately and intentionally.

The statute provides for punishment of persons who "willfully make default." If "willfully" meant with a bad or evil purpose, and not merely deliberately, any person who did not believe it right or lawful for a congressional committee to summon him, or make demand upon him, would be completely immune from punishment. Such a witness would gain substantially complete immunity by setting up his own "good faith judgment" against that of the committee on the question of the committee's power. Congress obviously did not intend that its process be so flouted even by persons acting in good faith, for the effectiveness of its compulsory investigative power would be greatly impaired if such a defense were available. The type of offense under consideration and the purpose of the statute show that "willfully" could not have meant more than deliberately and intentionally.

The *Sinclair* case, 279 U. S. 263, confirms this view. That case involved the second clause in R. S. 102, "refusal to answer pertinent questions."

In rejecting the contention that good faith was a defense, the Court said (p. 299):

> There is no merit in appellant's contention that he is entitled to a new trial because the court excluded evidence that in refusing to answer he acted in good faith on the advice of competent counsel. The gist of the offense is refusal to answer pertinent questions. No moral turpitude is involved. Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. He was bound rightly to construe the statute. His mistaken view of the law is no defense. *Armour Packing Co.* v. *United States*, 209 U. S. 56, 85. *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 49.

The clause of R. S. 102 involved in the *Sinclair* case did not contain the word "willfully."[4]

[4] Count 7 of the present indictment, on which respondent was convicted, is clearly laid under the same clause of R. S. 102 as the indictment in the *Sinclair* case (R. 4). Since Counts 1 and 7 use the terms "willfully" and "did make default" (R. 3), and the trial judge defined "willfully" in his charge (R. 177), we do not stop to consider whether those counts also were actually laid under the second clause of the statute, rather than the first. Respondent appeared, answered some queries, and produced some records (unlike Eisler and Josephson), but refused to produce certain particular records "upon the matter under inquiry" (as the in-

But as the above excerpt from the opinion indicates, the phrase "refuses to answer" (not "fails to answer") in itself denotes intentional conduct. And we think it clear that Congress did not intend the two phrases in the same sentence to have totally different meanings. For there would be no basis in reason for requiring witnesses to answer questions despite their good faith reliance on advice of counsel, and yet permitting them to use the same advice as an excuse for not appearing at all, or defaulting in the production of records, generally a much more serious interference with the investigatory power.

Respondent relies on the *Murdock* case, which also involved a failure to supply information, in that case to the Bureau of Internal Revenue. But the Court held "willfully" there to include an element of bad faith largely because the informational requirement was joined in a sentence containing substantive obligations to which the requirement of willfulness also pertained. The Court said (290 U. S. at 395–396):

> Aid in arriving at the meaning of the word "willfully" may be afforded by the context in which it is used (*United States* v. *Sioux City Stock Yards Co.*, 162 Fed. 556, 562), and, we think, in the present instance the other omissions which the

dictment charges). This can be said to be equivalent to a refusal to answer a question pertinent to the question under inquiry, rather than to a mere default in appearing.

statute denounces in the same sentence only if willful, aid in ascertaining the meaning as respects the offense here charged. The Revenue Acts command the citizen, where required by law or regulations, to pay the tax, to make a return, to keep records, and to supply information for computation, assessment or collection of the tax. He whose conduct is defined as criminal is one who "*willfully*" fails to pay the tax, to make a return, to keep the required records, or to supply the needed information. *Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct. And the requirement that the omission in these instances, must be willful, to be criminal, is persuasive that the same element is essential to the offense of failing to supply information.* [Emphasis supplied.]

The same approach to the present case shows that "willfully" has the less stringent meaning, for here the word is used in the context of the clause considered in the *Sinclair* case. As we have shown, Congress would not have intended the two clauses to have different meanings insofar as the factor of intent is concerned. And the punishment for failure to appear or testify is not coupled with substantive crimes with respect to

which Congress might have wished to require the existence of an evil or bad purpose. The statute thus clearly differs from that in the *Murdock* case.[5]

III

Pertinency has been properly shown

Running throughout respondent's brief is the complaint that the Government's case in this Court is a case which the United States Attorney refused to have tried, and that respondent is therefore prejudiced by having to meet in this Court a case which he could only meet by producing evidence at the trial which he was not permitted to introduce there (Resp. Br. 3–6, 9–10, 13–20, 49–50, 56–57). This contention does not accord with the record, and disregards the nature of the Government's arguments here and in the trial court as well as the established rules applicable to trials under R. S. 102.

1. Respondent argues as if the only matter in evidence before the trial judge, in passing on pertinency, was the fact that CCG and the respondent had registered (under protest) under the Regulation of Lobbying Act. We have shown

[5] *Morissette* v. *United States*, 342 U. S. 246, also cited by respondent (Resp. Br. 55), involved a statutory crime which was intimately related to, and stemmed from, common-law crimes having criminal intent as an ingredient. There is no occasion, therefore, to consider the relationship of such criminal intent to the "good faith" motive respondent presents as a defense.

(Govt. Main Br. 45–47) that that single fact, which was the Government's main reliance at the trial, would be enough to show pertinency, particularly since the demands were for information as to payments received by CCG after the Lobbying Act went into effect in 1946 (R. 2–4). But the truth is, as the printed record shows, that much more was specifically brought to the judge's attention by counsel for the Government or for respondent.

First, substantial segments of the Select Committee's interrogation of respondent were read, without objection, by counsel or witnesses (R. 23–30, 32–34, 41–42); that testimony showed, among other things, that CCG sent to Congress releases and other material (R. 32), that it distributed much printed matter (R. 29, 32; see also R. 89–91, 112), and that, in the opinion of the Committee's counsel, at least part of this material dealt specifically with proposed or pending pieces of legislation, which were enumerated (R. 41–42; see also Govt. Main Br. 54). In addition, respondent's Lobbying Act registrations, which were admitted into evidence, declared that CCG sometimes took a stand for or against legislation (R. 186). Government counsel expressly urged pertinency on the ground that the publications distributed by CCG dealt with federal legislation (R. 67).

Second, the matter of possible evasion or subterfuge *was* touched upon at the trial. The prose-

cutor argued that the Select Committee had a right to learn the name of a person who gave $2,000 for the distribution of a book (as charged in Count 6), "having always in mind that the contributors to a lobbying organization are at all times subject to listing under the Act, and therefore we say of course the committee could inquire" (R. 41). This was a plain reference to the fact that a so-called "purchaser" *might* be a "contributor" whose name should have been reported. The prosecutor also said that the Committee could inquire "as to whether or not the present Act [the Lobbying Act] was working properly" (R. 41), and, again with reference to the $2,000 payment from Toledo, he said (R. 67):

> It wasn't that she was buying $2,000 worth of that book—probably a number of thousand copies of it; she was giving $2,000 to the organization for the distribution of the book, an entirely different situation, and *one exactly within the purview of this committee to determine whether there was any violation of the Lobbying Act, or whether it was an activity that was not even included in the Act.* It was clearly within the field that they could investigate [for] their legislative purposes. [Emphasis supplied.]

It seems clear, therefore, that the main lines of the argument we make here to show pertinency were before the trial judge, and respondent is

incorrect in his cry of change-of-position and prejudice.[6]

2. Respondent now declares, however, that he did not introduce at the trial (but could have done so) evidence that the book-payments were not *in fact* disguised "contributions" reportable under the Lobbying Act (see Resp. Br. 5, 14–15, 19). This startling contention entirely neglects the cardinal rule that in passing on pertinency the judge is not determining truth or falsity; it was not his function, in this case, to decide whether the "purchasers" were really "contributors." That was for the Select Committee to investigate. The judge's only function, at the most, was to see whether there was a reasonable basis, at the time the demands were made on respondent, for the Committee's view that it ought to inquire into the matter of CCG's possible violation, evasion, or legal circumvention of the Lobbying Act. See Govt. Main Br. 50–52; *Okla. Press. Pub. Co.* v. *Walling*, 327 U. S. 186; *Blair* v. *United States*, 250 U. S. 273; *Sinclair* v. *United States*, 279 U. S. 263, 298–299. The evidence respondent now says

[6] Respondent admits (Resp. Br. 16) that the Government raised the matter of possible evasion and subterfuge on oral argument in the Court of Appeals. The majority opinion below discusses the matter of evasion at R. 199–200, but is misled by its failure to recognize that when the Select Committee declared that its study had been impeded by respondent's refusal to produce "pertinent financial records," the records it was referring to were those giving the names and addresses of the larger purchasers. See also Govt. Main Br. 50–52.

he would have produced at the trial—in order to show that there was no violation, evasion, or legal circumvention—would not and could not have deprived the Committee's demands, in June and August 1950, of their reasonable basis.[7] As we point out in our main brief (p. 52), the question is not whether the testimony and evidence before the Committee was true and correct, but whether that testimony and evidence made legitimate the Committee's concern with the further information which respondent refused to furnish.

3. Respondent's contention as to the alleged rejected or unproduced evidence also disregards the significant rule that pertinency is for the judge and not the jury. Respondent forgets that the books and materials which were proffered at R. 99–100, as well as the other offers to show further the nature of CCG's activities (R. 102–3), were expressly made to "permit the jury to judge for themselves just what the book purports to hold or preach" (R. 99). Since the jury had no concern with those matters, the judge rightly rejected the proffers, as he did other proffers which respondent's counsel insisted on making for the jury and not for the judge alone (R. 126, 127, 129, 130). For the same reason, the trial court was eminently right, de-

[7] The prosecutor did not claim that the purchasers were *in fact* contributors (see Resp. Br. 14–15), but merely that the Committee had a right to probe into that possibility. See *supra*, p. 17. The District Court so understood (R. 62). Similarly, that is the contention we make here.

spite respondent's complaint here, in charging the *jury* to disregard all speculation on the subject of respondent's activities and of the organization with which he is connected (R. 176). That is not to say that the *judge* disregarded those matters in ruling on pertinency.

4. As for the Select Committee's Contempt Report and the portions of the hearings which were not read by counsel or a witness, we reiterate our view (Govt. Main Br. 48–50) that they were properly before the trial court, were probably considered by it (especially the Contempt Report),[8] and, in any event, may be considered by this Court. Respondent has not seen fit to take advantage of his opportunity to present to this Court, in answer to the details we cite, any materials to show that the demands made upon him were not pertinent to the Committee's inquiry. We do not believe such a showing could possibly be made, no matter what materials respondent would bring forth, if we are correct in our interpretation of the scope of the Committee's investigation (Govt. Main Br. 29–45, 50–57). Aside from the constitutional question, that issue of the scope of the inquiry is the only "real" issue in this case.

---

[8] Respondent's trial counsel said during the trial (R. 61): "I have the hearings here, and Your Honor has the hearings * * *."

Both the majority and the minority opinions below state that the Contempt Report is a part of the record on appeal (R. 196, fn. 4, 214). In his brief in the Court of Appeals, respondent referred to and quoted from the Report.

IV

Respondent's brief twice states (pp. 25, 46) that we concede that general legislation compelling disclosure of the names of CCG's larger purchasers would probably be invalid. This is a misunderstanding of our position. We make no such concession, and we hope that this is indicated by pages 58–77 and 78–80 of our main brief. The sentence on pages 77–78 of our main brief, to which respondent refers, was intended merely to urge that, *even if it be assumed for the purposes of argument* that such general disclosure legislation would be invalid, still the Select Committee's *ad hoc* demands on respondent would be valid. See our main br., p. 21. Except for the purposes of the single argument at pp. 77–78, we make no such assumption.

CONCLUSION

For these reasons, and those set forth in our main brief, it is respectfully submitted that the judgment of the Court of Appeals should be reversed and that of the District Court affirmed.

Respectfully submitted.

WALTER J. CUMMINGS, Jr.,
Solicitor General,
CHARLES B. MURRAY,
Assistant Attorney General,
OSCAR H. DAVIS,
Special Assistant to the Attorney General,
BEATRICE ROSENBERG,
JOHN R. WILKINS,
Attorneys.

DECEMBER 1952.

U.S. GOVERNMENT PRINTING OFFICE 952